

1 **WO**

2
3
4 IN THE UNITED STATES DISTRICT COURT
5 FOR THE DISTRICT OF ARIZONA

6 Kimberly A. O'Connor,

7 Plaintiff,

8 v.

9 Scottsdale Healthcare Corp; et al.,

10 Defendants.
11
12

No. CV11-2264-PHX-JAT

ORDER

13 On May 15, 2012, the Court granted Defendants' Motion to Dismiss Plaintiff's
14 Complaint. (Doc. 18.) The Court dismissed Plaintiff's claim under the Americans with
15 Disabilities Act (the "ADA") for lack of jurisdiction and dismissed the remaining state
16 law claims without prejudice. On May 29, 2012, Plaintiff filed a Motion for
17 Reconsideration and to Set Aside the Judgment, along with an accompanying
18 Declaration. (Doc. 20.)

19 Plaintiff moves pursuant to Local Rule of Civil Procedure 7.2(g)(1) for the Court
20 to reconsider its May 15 Order and moves pursuant to Federal Rules of Civil Procedure
21 59(e) and 60(b)(1) for the Court to set aside the judgment entered the same date.
22 Generally, motions for reconsideration are appropriate only if: 1) the movant presents
23 newly discovered evidence; 2) the Court committed clear error or the initial decision was
24 manifestly unjust; or 3) an intervening change in controlling law has occurred. *School*
25 *Dist. No. 1J, Multnomah County, Oregon v. AcandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.
26 1993). A party should not file a motion to reconsider to ask a court "to rethink what the
27 court had already thought through, rightly or wrongly." *Above the Belt, Inc. v. Mel*
28 *Bohannon Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983). "No motion for

1 reconsideration shall repeat in any manner any oral or written argument made in support
2 of or in opposition to the original motion.” *Motorola, Inc. v. J.B. Rodgers Mech.*
3 *Contractors, Inc.*, 215 F.R.D. 581, 586 (D. Ariz. 2003); *see also* L.R.Civ.P. 7.2(g)(1).
4 The Court ordinarily will deny a “motion for reconsideration of an Order absent a
5 showing of manifest error or a showing of new facts or legal authority that could not have
6 been brought to its attention earlier with reasonable diligence.” L.R.Civ.P. 7.2(g)(1).

7 Plaintiff does not point to newly discovered facts or argue that a change in
8 controlling legal authority has occurred. Rather, Plaintiff argues that the Court
9 manifestly erred in dismissing her ADA claim for lack of standing.

10 In its May 15 Order, the Court found that Plaintiff lacked Article III standing to
11 pursue a claim for ADA discrimination because the momentary delay she suffered in
12 gaining access to the hospital with Peaches, her service dog, did not constitute a denial of
13 public accommodations. The Court relied in part on *Skaff v. Meridien N. Am. Beverly*
14 *Hills, LLC*, 506 F.3d 832 (9th Cir. 2007) in reaching its decision.

15 Plaintiff confirms in her Declaration accompanying the Motion for
16 Reconsideration that her interaction with the security guard and, later, his supervisor,
17 caused her only a forty-minute delay in reaching her mother’s hospital room with
18 Peaches. (Doc. 20-1 ¶14.) Plaintiff does not cite to any cases holding that a forty-minute
19 delay in access constitutes a constructive denial of public accommodation. And she
20 attempts to distinguish *Skaff* because the plaintiff in that case had a physical, rather than a
21 mental, disability, but the Court finds no reason to distinguish *Skaff* on that basis.

22 Basically, Plaintiff would like the Court to re-think its earlier analysis. Because
23 Plaintiff does not argue a change in controlling precedent and because the Court finds
24 that it did manifestly err in holding that Plaintiff lacked Article III standing to bring a
25 claim that she was denied public accommodation, the Court will not reconsider that
26 holding.

27 In addition to finding that Plaintiff’s momentary delay in reaching her mother’s
28 hospital room with Peaches did not constitute a denial of public accommodation, the

1 Court found that, even if the brief delay somehow did constitute a denial of
2 accommodation, Plaintiff did not have standing to sue for injunctive relief. To establish
3 standing to pursue injunctive relief, Plaintiff must demonstrate a “real and immediate
4 threat of repeated injury” in the future. *Chapman v. Pier 1 (U.S.) Inc.*, 631 F.3d 939, 946
5 (9th Cir. 2011)(internal citations omitted). And it is the reality of the threat of repeated
6 injury that is relevant to standing, not Plaintiff’s subjective apprehensions. *City of Los*
7 *Angeles v. Lyons*, 461 U.S. 95, 107 n.8 (1983).

8 Plaintiff argues that the Court incorrectly read facts into her Complaint when the
9 Court reached its conclusion regarding her standing to sue for injunctive relief based on a
10 real and immediate threat of repeated injury. The Court will grant Plaintiff’s Motion for
11 Reconsideration to the limited extent necessary to correct the Court’s earlier mistaken
12 assumptions.

13 In its May 15 Order, the Court stated, “According to her own Complaint, Plaintiff
14 returned to the hospital without incident on several occasions during the days after the
15 encounter with the security guard. She never had another issue. Any subjective fears
16 about returning to the hospital are belied by the objective reality. Plaintiff’s
17 unsubstantiated, subjective fear that she might, at some point in the future, have another
18 problem bringing Peaches to Defendant hospital does not confer standing to pursue
19 injunctive relief.” (Doc. pp. 7-8.) Plaintiff correctly points out that while the Complaint
20 alleges she returned to the hospital on several occasions to visit her mother after the
21 incident with the security guard, the Complaint does not allege that Plaintiff brought
22 Peaches with her on those subsequent visits. The Court incorrectly presumed that
23 Plaintiff brought Peaches with her on her return visits to the hospital based on a mistaken
24 assumption that Plaintiff needed and therefore always brought Peaches with her when
25 visiting public accommodations. To the extent the May 15 Order indicates that Plaintiff
26 brought Peaches with her to the hospital several times after the security-guard incident
27 without problem, the Court hereby corrects that mistake.

28 But Plaintiff admits in her Declaration that she did return to the hospital with

1 Peaches for a brief visit, after the incident with the security guard, without encountering a
2 problem. (Doc. 20-1 ¶16.) The Court would not have reached a different conclusion
3 regarding Plaintiff's standing to pursue injunctive relief if the Court had known that
4 Plaintiff brought Peaches with her on only one subsequent visit, versus three subsequent
5 visits. Plaintiff's ability, after the incident with the security guard, to enter the hospital
6 without being asked to register Peaches belies her subjective fears that she will again
7 encounter a problem with bringing Peaches to the hospital.

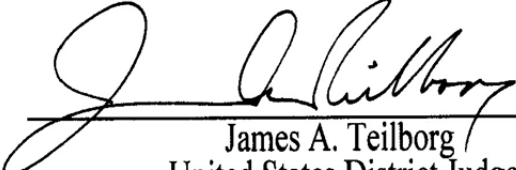
8 Moreover, the Court's holding regarding Plaintiff's standing to pursue injunctive
9 relief was in addition to the Court's holding that Plaintiff did not suffer an injury
10 sufficient to confer Article III standing to pursue an ADA discrimination claim. Even if
11 the Court had found that Plaintiff sufficiently alleged a real and immediate threat that she
12 would again be asked to register Peaches before entering the hospital, the Court still
13 would have held that Plaintiff lacked standing to pursue her ADA claim because the
14 forty-minute delay she experienced in reaching her mother's room with Peaches did not
15 constitute a denial of public accommodation. The Court would have dismissed Plaintiff's
16 ADA claim for lack of jurisdiction on that basis alone. The Court therefore will not
17 reverse its earlier grant of Defendants' Motion to Dismiss and will not set aside the
18 subsequent judgment for Defendants.

19 Accordingly,

20 **IT IS ORDERED Granting** Plaintiff's Motion for Reconsideration (Doc. 20) to
21 the limited extent set forth above, but **Denying** all relief requested by Plaintiff.

22 Dated this 8th day of June, 2012.

23
24
25
26
27
28



James A. Teilborg
United States District Judge